

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson,

Plaintiff,

v.

Moraya Investments, LLC, a
California Limited Liability
Company; and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of Moraya Investments, LLC, a California Limited Liability Company; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendant Moraya Investments, LLC owned the real property located at or about 410 W. A Street, Hayward, California, in October 2018.

1 3. Defendant Moraya Investments, LLC owned the real property located
2 at or about 410 W. A Street, Hayward, California, in January 2019.

3 4. Defendant Moraya Investments, LLC owned the real property located
4 at or about 410 W. A Street, Hayward, California, in March 2019.

5 5. Defendant Moraya Investments, LLC owns the real property located at
6 or about 410 W. A Street, Hayward, California, currently.

7 6. Defendant Moraya Investments, LLC owned Heritage Inn Express
8 located at or about 410 W. A Street, Hayward, California, in October 2018.

9 7. Defendant Moraya Investments, LLC owned Heritage Inn Express
10 located at or about 410 W. A Street, Hayward, California, in January 2019.

11 8. Defendant Moraya Investments, LLC owned Heritage Inn Express
12 located at or about 410 W. A Street, Hayward, California, in March 2019.

13 9. Defendant Moraya Investments, LLC owns Heritage Inn Express
14 (“Motel”) located at or about 410 W. A Street, Hayward, California, currently.

15 10. Plaintiff does not know the true names of Defendants, their business
16 capacities, their ownership connection to the property and business, or their
17 relative responsibilities in causing the access violations herein complained of,
18 and alleges a joint venture and common enterprise by all such Defendants.
19 Plaintiff is informed and believes that each of the Defendants herein,
20 including Does 1 through 10, inclusive, is responsible in some capacity for the
21 events herein alleged, or is a necessary party for obtaining appropriate relief.
22 Plaintiff will seek leave to amend when the true names, capacities,
23 connections, and responsibilities of the Defendants and Does 1 through 10,
24 inclusive, are ascertained.

25
26 **JURISDICTION & VENUE:**

27 11. The Court has subject matter jurisdiction over the action pursuant to 28
28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with

1 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

2 12. Pursuant to supplemental jurisdiction, an attendant and related cause
3 of action, arising from the same nucleus of operative facts and arising out of
4 the same transactions, is also brought under California's Unruh Civil Rights
5 Act, which act expressly incorporates the Americans with Disabilities Act.

6 13. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
7 founded on the fact that the real property which is the subject of this action is
8 located in this district and that Plaintiff's cause of action arose in this district.

9
10 **FACTUAL ALLEGATIONS:**

11 14. Plaintiff went to the Motel in October 2018, January 2019 and March
12 2019 with the intention to avail himself of its accommodation, motivated in
13 part to determine if the defendants comply with the disability access laws.

14 15. The Motel is a facility open to the public, a place of public
15 accommodation, and a business establishment.

16 16. Parking spaces are one of the facilities, privileges, and advantages
17 offered by Defendants to patrons of the Motel.

18 17. Unfortunately, on the dates of the plaintiff's visits, the defendants failed
19 to provide accessible parking.

20 18. Currently, the defendants fail to provide accessible parking.

21 19. Guestrooms are another one of the facilities, privileges, and advantages
22 offered by Defendants to patrons of the Motel.

23 20. Unfortunately, on the dates of the plaintiff's visits, the defendants failed
24 to provide accessible guestrooms.

25 21. Currently, the defendants fail to provide accessible guestrooms.

26 22. Paths of travel are also one of the facilities, privileges, and advantages
27 offered by Defendants to patrons of the Motel.

28 23. Unfortunately, on the dates of the plaintiff's visits, the defendants failed

1 to provide accessible paths of travel leading into the Motel office.

2 24. Currently, the defendants fail to provide accessible paths of travel
3 leading into the office.

4 25. The Motel has a sales counter where it handles its transactions with
5 customers.

6 26. Unfortunately, on the dates of the plaintiff's visits, the defendants failed
7 to provide an accessible sales counter.

8 27. Currently, the defendants fail to provide an accessible sales counter.

9 28. Plaintiff personally encountered these barriers.

10 29. By failing to provide accessible facilities, the defendants denied the
11 plaintiff full and equal access.

12 30. The failure to provide accessible facilities created difficulty and
13 discomfort for the Plaintiff.

14 31. The defendants have failed to maintain in working and useable
15 conditions those features required to provide ready access to persons with
16 disabilities.

17 32. The barriers identified above are easily removed without much
18 difficulty or expense. They are the types of barriers identified by the
19 Department of Justice as presumably readily achievable to remove and, in fact,
20 these barriers are readily achievable to remove. Moreover, there are numerous
21 alternative accommodations that could be made to provide a greater level of
22 access if complete removal were not achievable.

23 33. Plaintiff will return to the Motel to avail himself of its accommodation
24 and to determine compliance with the disability access laws once it is
25 represented to him that the Motel and its facilities are accessible. Plaintiff is
26 currently deterred from doing so because of his knowledge of the existing
27 barriers and his uncertainty about the existence of yet other barriers on the
28 site. If the barriers are not removed, the plaintiff will face unlawful and

1 discriminatory barriers again.

2 34. Given the obvious and blatant nature of the barriers and violations
3 alleged herein, the plaintiff alleges, on information and belief, that there are
4 other violations and barriers on the site that relate to his disability. Plaintiff will
5 amend the complaint, to provide proper notice regarding the scope of this
6 lawsuit, once he conducts a site inspection. However, please be on notice that
7 the plaintiff seeks to have all barriers related to his disability remedied. See
8 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
9 encounters one barrier at a site, he can sue to have all barriers that relate to his
10 disability removed regardless of whether he personally encountered them).

11
12 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
13 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
14 Defendants.) (42 U.S.C. section 12101, et seq.)

15 35. Plaintiff re-pleads and incorporates by reference, as if fully set forth
16 again herein, the allegations contained in all prior paragraphs of this
17 complaint.

18 36. Under the ADA, it is an act of discrimination to fail to ensure that the
19 privileges, advantages, accommodations, facilities, goods and services of any
20 place of public accommodation is offered on a full and equal basis by anyone
21 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
22 § 12182(a). Discrimination is defined, inter alia, as follows:

- 23 a. A failure to make reasonable modifications in policies, practices,
24 or procedures, when such modifications are necessary to afford
25 goods, services, facilities, privileges, advantages, or
26 accommodations to individuals with disabilities, unless the
27 accommodation would work a fundamental alteration of those
28 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

1 b. A failure to remove architectural barriers where such removal is
2 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
3 defined by reference to the ADA Standards.

4 c. A failure to make alterations in such a manner that, to the
5 maximum extent feasible, the altered portions of the facility are
6 readily accessible to and usable by individuals with disabilities,
7 including individuals who use wheelchairs or to ensure that, to the
8 maximum extent feasible, the path of travel to the altered area and
9 the bathrooms, telephones, and drinking fountains serving the
10 altered area, are readily accessible to and usable by individuals
11 with disabilities. 42 U.S.C. § 12183(a)(2).

12 37. When a business provides parking for its customers, it must provide
13 accessible parking.

14 38. Here, the failure to provide accessible parking is a violation of the law.

15 39. When a business provides facilities such as guestrooms, it must provide
16 accessible guestrooms.

17 40. Here, the failure to provide accessible guestrooms is a violation of the
18 law.

19 41. When a business provides paths of travel, it must provide accessible
20 paths of travel.

21 42. Here, accessible paths of travel have not been provided.

22 43. When a business provides facilities such as a sales or transaction
23 counter, it must provide an accessible sales or transaction counter.

24 44. Here, no such accessible sales counter has been provided.

25 45. The Safe Harbor provisions of the 2010 Standards are not applicable
26 here because the conditions challenged in this lawsuit do not comply with the
27 1991 Standards.

28 46. A public accommodation must maintain in operable working condition

1 those features of its facilities and equipment that are required to be readily
2 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

3 47. Here, the failure to ensure that the accessible facilities were available
4 and ready to be used by the plaintiff is a violation of the law.

5
6 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
7 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
8 Code § 51-53.)

9 48. Plaintiff repleads and incorporates by reference, as if fully set forth
10 again herein, the allegations contained in all prior paragraphs of this
11 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
12 that persons with disabilities are entitled to full and equal accommodations,
13 advantages, facilities, privileges, or services in all business establishment of
14 every kind whatsoever within the jurisdiction of the State of California. Cal.
15 Civ. Code §51(b).

16 49. The Unruh Act provides that a violation of the ADA is a violation of the
17 Unruh Act. Cal. Civ. Code, § 51(f).

18 50. Defendants’ acts and omissions, as herein alleged, have violated the
19 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
20 rights to full and equal use of the accommodations, advantages, facilities,
21 privileges, or services offered.

22 51. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
23 discomfort or embarrassment for the plaintiff, the defendants are also each
24 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
25 (c).)

26 52. Although the plaintiff was markedly frustrated by facing discriminatory
27 barriers, even manifesting itself with minor and fleeting physical symptoms,
28 the plaintiff does not value this very modest physical personal injury greater

1 than the amount of the statutory damages.

2
3 **PRAYER:**

4 Wherefore, Plaintiff prays that this Court award damages and provide
5 relief as follows:

6 1. For injunctive relief, compelling Defendants to comply with the
7 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
8 plaintiff is not invoking section 55 of the California Civil Code and is not
9 seeking injunctive relief under the Disabled Persons Act at all.

10 2. Damages under the Unruh Civil Rights Act, which provides for actual
11 damages and a statutory minimum of \$4,000 for each offense.

12 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
13 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

14 Dated: June 21, 2019

CENTER FOR DISABILITY ACCESS

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16 By: 

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18 _____
19 Amanda Seabock, Esq.
20 Attorney for plaintiff
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